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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,240	05/13/2005	Koji Miyata	Q86264	7140
23373 7590 12/10/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER CROWELL, ANNA M				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
12/10/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sughrue@sughrue.com  
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### Office Action Summary

**Application No.**

10/525,240

**Applicant(s)**

MIYATA ET AL.

**Examiner**

Michelle Crowell

**Art Unit**

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-21 is/are pending in the application.
- 4a) Of the above claim(s) 2-5 and 8-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6 and 20-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Species III, Figure 12 (claims 6, 20, 21) is acknowledged.
2. Claims 2-5 and 7-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 2, 2009 has been entered.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**6. Claims 6 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (JP 2001-338912) or Morimoto (J.P. 2001-077095) in view of Nishijima et al. (06-181187).**

Referring to Drawings 1 and 2 and paragraphs [0025]-[0033], Ito et al. discloses a magnetic field generator 21 for magnetron plasma, comprising a plurality of magnetic segments 22 provided on the outer side of a process chamber 1 for performing a predetermined process on a substrate placed in said chamber for generating a multi-pole magnetic field 25 along the circumference of said substrate.

Referring to Drawings 1, 2, 5, and 6 and paragraphs [0037]-[0041], [0057]-[0059], Morimoto discloses a magnetic field generator 23 for magnetron plasma, comprising a plurality of magnetic segments 24 provided on the outer side of a process chamber 2 for performing a predetermined process on a substrate placed in said chamber for generating a multi-pole magnetic field 25 along the circumference of said substrate.

Ito et al. or Morimoto fail to teach a magnetic field generator comprises an upper magnetic field generating mechanism and a lower magnetic field generating mechanism and in that said upper and lower magnetic field generating mechanisms are arranged such as to be brought close to each other with respect to a horizontal level at which the substrate is positioned and moved away from each other with respect to the horizontal level.

Referring to paragraph [0002], Nishijima et al. teaches a magnetic field generator

comprising an upper magnetic field generating mechanism 21 and a lower magnetic field generating mechanism 31 in order to confine the plasma. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the magnet field generator of Ito et al. or Morimoto to have an upper magnetic field generating mechanism 21 and a lower magnetic field generating mechanism 31 since this is an alternate arrangement for a magnet field generator that would enhance plasma confinement.

In addition, referring to Drawing 1 and paragraphs [0014]-[0019], Nishijima et al. teaches a plasma processing apparatus using a moving mechanism 22, 32 which changes a gap vertically between the upper and lower magnetic field generating mechanisms 21, 31 in order to enhance plasma uniformity. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to bring close to each other and move away from each other the upper and lower magnetic field generating mechanisms using a moving mechanism as taught by Nishijima et al. in order to enhance plasma uniformity.

**7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. (JP 2001-338912) or Morimoto (J.P. 2001-077095) in view of Arami et al. (US 6,014,943).**

The teachings of Ito et al. or Morimoto have been discussed above.

Ito et al. or Morimoto fail to teach that each of the magnet segments is substantially in the shape of a cylinder.

It should be noted that Ito et al. (par.[0028]) discloses that the shape of the magnet segments can be altered. Referring to Figures 1-3 and column 6, lines 40-67, Arami et al. shows that it is conventionally known in the art for each of the magnet segments to be substantially in the shape of the cylinder. In addition, the shape of the claimed magnet segments is considered a

matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular shape of the claimed magnet segments was significant. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shape of the magnet segments of Ito et al. or Morimoto to be substantially cylindrical as taught by Arami et al. since the shape of the magnet segments is considered an obvious design choice to enhance the desired process.

### ***Response to Arguments***

8. Applicant's arguments filed August 13, 2009 have been fully considered but they are not persuasive.

Applicant has argued that Nishijima discloses that the magnets 21, 31 are adjusted with respect to electrodes 16, 17 and has indicated that Nishijima does not teach an adjustment of a gap between the upper magnetic field generating mechanism and the lower magnetic field generating mechanism because the magnets 21, 31 are adjusted relative to the electrodes 16, 17. However, it should be noted that Nishijima discloses that the magnets 21, 31 are independently vertically adjusted by mechanisms 22, 32. According to the last lines of paragraphs [0015]-[0016], Nishijima states that moving mechanisms 22, 32 are used to vertically move the upper and lower magnetic field generating mechanism 21, 31. In addition, regardless of whether or not the magnets are adjusted relative to the electrode, since the magnets move vertically the magnets are being brought close to each other and they move away from each other. Furthermore, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim (Ex parte Masham, 2

USPQ2d 1647 (Bd. Pat. App. & Inter. 1987)). In the instant case, the apparatus of Nishijima teaches a structure for vertically 22, 32 moving the magnets 21, 31 independently, thus the structure is capable of adjusting the gap between the magnets.

Finally, the invention of Drawing 1 of Nishijima discloses that the electrodes 16, 17 are fixed. Since the electrodes 16, 17 are fixed, the vertical movement of the magnets 21, 31 is relative to the fixed electrode 17 holding the substrate as well. In other words, the vertical movement of magnets 21, 31 (by mechanism 22, 32) will be brought close to each other with respect to a horizontal level at which the substrate (i.e. stationary electrode 17 with substrate 2) is positioned and moved away from each other with respect to the horizontal level. Also, the term “close” is a relative term and fails to indicate “how close” (i.e. a measurable distance).

Therefore, the combination of Ito or Morimoto in view of Nishijima satisfies the claimed requirements.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Crowell whose telephone number is (571)272-1432. The examiner can normally be reached on M-Th (9:30 -6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on (571) 272-1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michelle Crowell/  
Examiner, Art Unit 1792

/Parviz Hassanzadeh/  
Supervisory Patent Examiner, Art Unit 1792